

## **Opinion No. 58-175**

August 26, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Howard M Rosenthal,  
Assistant Attorney General

**TO:** Honorable Fred W. Foster, State Representative, Mangus Route, Silver City, New Mexico

### **QUESTION**

#### QUESTION

In case of a vacancy during the term of a State Senator and before a General Election in mid-term, is the vacancy filled by the County Commissioners or is it filled by the Central Committees of both parties by putting names on the ballot for a vote of the people?

#### CONCLUSION

The senatorial vacancy is filled by the County Commissioners; the ballot vacancy by the county committee.

### **OPINION**

#### ANALYSIS

A constitutional provision indicates the procedure to be followed in the event of vacancies in the legislature. Article IV, § 4 provides:

"Members of the legislature shall be elected as follows: Senators for the term of four years, and members of the house of representatives for the term of two years. They shall be elected on the day provided by law for holding the general election of state officers or representatives in congress.

If a vacancy occurs in the office of senator or member of the house of representatives, for any reason, the county commissioners of the county wherein the vacancy occurs shall fill such vacancy by appointment; Provided, however; that if a vacancy occurs in a legislative district composed of more than one (1) county, then the county commissioners of each county in the legislative district shall submit one (1) name to the governor, who shall appoint the representative to fill such vacancy from the list of names so submitted by the respective county commissions.

Such legislative appointments as provided in this section shall be for a term ending on December 31, subsequent to the next succeeding general election."

Applying the above provision to your specific question, the County Commissioners of the county involved designate the individual to fill the vacancy. Such term ends on the December 31st following the next general election. This would take care of the vacancy in the position.

As to the vacancy on the ballot which is quite different from a vacancy in the position a different procedure has been indicated. Quoting from a previous opinion from this office No. 58-139;

"In our opinion, the Legislature, by Sec. 3-11-54, meant to provide the mechanics for filling any vacancy in the party ticket for the General Election."

Sec. 3-11-54 indicates two sources for the appointment to fill vacancies on the official general election ballot. The State Executive Committee is designated for state offices and the County Committee for county offices. Inasmuch as a senatorial office is voted upon only by the residents of the county which the senator represents, it would appear quite obvious that the County Central Committee should designate an appointee for the vacancy on the ballot to which you refer.